

In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

FILED

at 10 O'clock & 57 min AM

Date 6/26/02

MICHAEL F. MCHUGH, CLERK
United States Bankruptcy Court
Savannah, Georgia *mlh*

In the matter of:

DEBORAH RUTH DICKINSON

Debtor

CHARLES DICKINSON

Movant

v.

DEBORAH RUTH DICKINSON

Respondent

Chapter 13 Case

Number 02-40260

MEMORANDUM AND ORDER
ON MOTION TO DISMISS OR IN THE
ALTERNATIVE FOR RELIEF FROM STAY

In this proceeding, Charles Dickinson ("Movant"), former spouse of Debtor Deborah Ruth Dickinson ("Debtor"), asks the Court to: (1) determine that the proceedings which he seeks to pursue in South Carolina to modify or to hold Debtor in contempt is not precluded by the automatic stay of 11 U.S.C. § 362 because of the exceptions found in § 362 (b); or to (2) abstain under 28 U.S.C. § 1334 as suggested by the Eleventh Circuit in Carver v. Carver, 954 F.2d 1573 (11th Cir. 1992); or to (3) dismiss Debtor's case on the basis that neither her case nor her plan is filed in good faith.

Determination of these issues constitutes a core proceeding over which the Court has jurisdiction pursuant to 28 U.S.C. § 157(a), (b)(1) & (b)(2)(G).

PROCEDURAL BACKGROUND

Debtor and Movant were married in 1983 and separated in 1997. On December 14, 1998, the Family Court of the Ninth Judicial Circuit of the State of South Carolina issued an amended final order making certain financial provisions for the parties.

On January 12, 2000, Debtor filed a Chapter 7 bankruptcy case. *See In re Deborah Dickinson*, Ch. 7 Case No. 00-40106. On April 10, 2001, this Court ruled that certain obligations of Debtor to Movant in the South Carolina court's decree were nondischargeable under 11 U.S.C. § 523(a)(15), *see Dickinson v. Dickinson*, Adv. No. 00-4062, slip op. at 9-10, (Bankr. S.D. Ga. 2001) (Davis, J.) (deciding that, in light of overriding intent of South Carolina domestic relations court to divide assets and liabilities of parties on fifty-fifty basis, there was no issue of dischargeability under § 523(a)(5)), and the Clerk of this Court entered a judgment in favor of Movant in the amount of \$21,690.95 plus interest accrued from the date of the domestic relations decree.

Debtor thereafter filed a Chapter 13 bankruptcy case on May 14, 2001, in which Movant was the only creditor listed. *See Schedules D, E & F*, Ch. 13 Case No. 01-41422. On July 6, 2001, Movant filed a Motion for Relief from Stay in which he sought

the right to proceed in the State of South Carolina to hold Debtor in contempt. This Court granted that motion on August 21, 2001. On September 26, 2001, this Court, pursuant to Debtor's directive to voluntarily dismiss the case, dismissed that Chapter 13 case.

After September 26, 2001, Movant initiated some proceedings in South Carolina. Debtor subsequently filed the current Chapter 13 case on January 23, 2002. On February 14, 2002, Movant filed a Motion to Dismiss or in the Alternative for Relief from Stay, and a hearing was held on March 12, 2002.

Pursuant to Bankruptcy Rule 7052(a), I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtor initially listed Movant as the sole creditor on her bankruptcy schedules. On February 14, 2002, she amended the schedules to include six additional creditors. The debts to those creditors are the debts for which Debtor was responsible pursuant to the divorce decree, and they were the debts underlying Movant's judgment debt against Debtor. *See* Am. Final Order ¶ 21 (Fam. Ct. S. C. 9th Jud. Cir. Dec. 4, 1998) (Bonnoitt, J.)

Debtor's plan proposes to pay Movant approximately twenty (20) cents on

the dollar of his claim over a three year period. After taking into account all of Debtor's other income and expenses, her disposable income amounts to only \$150.00 per month. Payment of that sum less attorney's fees and administrative expenses would yield less than \$5,000.00 to Movant over a three year period.

A review of Debtor's bankruptcy schedules reveals that she owns no real property, that she owns household furnishings, furniture, and jewelry valued at \$1,525.00, that she has a right to collect alimony of \$750.00 per month from Movant, and that she owns a 1984 Toyota worth \$500.00. She claimed an exemption in all of her personal property and listed Movant as her sole creditor for a stated claim amount of \$22,000.00. Including interest, the claim amounts to approximately \$29,000.

CONCLUSIONS OF LAW

The first relief sought by Movant, which is lifting the automatic stay for the stated purpose, presents no issue for determination by this Court. 11 U.S.C. § 362(b) provides for lifting the automatic stay for purposes of commencing or continuing an action or proceeding for "the establishment or modification of an order for alimony, maintenance, or support" or for "the collection of alimony, maintenance, or support from property that is not property of the estate." § 362 (b)(2)(A)(ii) & (B). Here, Debtor does not dispute that § 362(b) applies, and her counsel stated he had no opposition to the Court lifting the stay to permit the Movant's effort to modify the decree.

The remaining questions are whether Debtor's case should be dismissed on the basis that she lacked good faith in filing her current Chapter 13 case and whether this Court should abstain from assuming jurisdiction over a bankruptcy case where the only debt arose from a domestic dispute, which debt's nondischargeability has already been litigated and determined in this Court. I conclude that Debtor's case was not filed in good faith and, pursuant to the following discussion, dismiss her case on that basis.

Under the super-discharge provisions, a Chapter 13 debtor may submit for confirmation a plan that modifies the rights of holders of secured or unsecured claims. After confirmation and upon completion of plan payments, the bankruptcy court is directed to "grant the debtor a discharge of all debts provided for by the plan," § 1328(a), subject to certain enumerated exceptions, *see* § 1328(a), (b), (c), (d).

The debt Debtor seeks to discharge under her Chapter 13 plan was held nondischargeable in her prior Chapter 7 case under § 523(a)(15), *see Dickinson*, Adv. No. 00-4062, slip op. at 8-10. Because the enumerated exceptions to the superdischargeability of debts under Chapter 13 do not include debts of the kind specified in § 523(a)(15), a discharge under Chapter 13 would dispose of Debtor's debt to Movant even though the debt was nondischargeable in her Chapter 7 case.

Notwithstanding the superdischarge available to Debtor in Chapter 13, her

plan must have been filed in good faith in order to be confirmed. *See* § 1325(a)(3). If Debtor filed in good faith, then the disposition of her case is straightforward under the superdischarge provisions for Chapter 13 debtors. If however, Debtor did not file in good faith, her case must be dismissed.

A determination of whether a case was filed in good faith is necessarily rooted in factual analysis. While bankruptcy courts should be alert to factors that may be indicative of lack of good faith in filing, *see* Kitchens v. Ga. RR Bank and Trust Co. (In re Kitchens), 702 F.2d 885, 888-89 (11th Cir. 1983) (identifying non-exhaustive list, including debtor's motivations and sincerity in seeking relief, whether debtor dealt with creditors in good faith, debtor's income, debtor's earning ability, debtor's living expenses, frequency with which debtor has sought bankruptcy relief, and special circumstances), no single factor is determinative; instead, a court should consider the circumstances as a whole, *see, e.g.,* Mason v. Young (In re Young), 237 F.3d 1168, 1174 (10th Cir. 2001); In re Chaffin, 816 F.2d 1070, 1073 (5th Cir. 1987), which include pre-petition circumstances as well as circumstances surrounding the current filing, *e.g.,* Solomon v. Cosby (In re Solomon), 67 F.3d 1128, 1134 (4th Cir. 1995); Soc'y Nat'l Bank v. Barrett (In re Barrett), 964 F.2d 588, 592 (6th Cir. 1992). *But see* Keach v. Boyajian (In re Keach), 243 B.R. 851, 867-68 (B.A.P. 1st Cir. 2000) (cautioning that only circumstances relevant to debtor's honesty of purpose in filing should be considered).

Chapter 13 reorganization is not categorically foreclosed to a debtor who previously filed a Chapter 7 petition; however, because of the importance of considering the circumstances as a whole in making a determination with respect to good faith at filing, a “Chapter 20” necessitates particular scrutiny of the accompanying circumstances, even more so where the Chapter 13 plan proposes to pay only a small portion of a debt that could not be discharged in Chapter 7, Ed Schory & Sons, Inc. v. Francis (In re Francis), 273 B.R. 87, 91 (B.A.P. 6th Cir. 2002) (“The rule in the Sixth Circuit is that plans proposing to pay such low percentages of nondischargeable debts deserve ‘particular scrutiny.’ ” (citing Hardin v. Caldwell (In re Caldwell), 895 F.2d 1123, 1126 (6th Cir. 1990))). Thus, a bankruptcy court’s scrutiny of the circumstances in their totality is crucial to confirmability of a Chapter 13 plan in the “Chapter 20” context. See Francis, 273 B.R. at 93-95 (noting, in affirming good-faith finding, that: thoroughness of scrutiny achieved because debtor’s “life had been combed through” made confirmation possible; debtor “did not file the chapter 13 petition and plan immediately on the heels of his chapter 7 [but instead] . . . made significant voluntary payments on the judgment [debt]”; and length of plan was maximum five years permitted by Code).

This Court recently addressed the issue of good faith in filing a Chapter 13 case on the heel of a Chapter 7 case in which a claim was held nondischargeable. See In re Sellers, Ch. 13 Case No. 01-20561, slip op. (S.D. Ga. Dec. 11, 2001). In Sellers, I identified several principles which apply in analyzing good faith in a “Chapter 20”

situation, *see id.* at 5-9, which when applied to the totality of the facts, resulted in this Court's finding lack of that debtor's lack of good faith in filing, *see id.* at 8-13. Those principles were: (1) the good faith test requires more than a simple determination that a debtor is applying "best effort" in designating all disposable income to his proposed plan to discharge a debt dischargeable in Chapter 7; (2) good faith requires a showing that reasons other than, or in addition to, a nondischargeable debt pressed debtors to file for Chapter 13 protection; (3) a Chapter 13 debtor must evidence, in the totality of circumstances, an overall sincere effort to satisfy a claim nondischargeable in Chapter 7; and (4) the result of confirming a Chapter 13 plan must be consistent with Code standards. *Id.* at 3-9 (summarizing principles derived from circuit appellate decisions in 11th, 5th, 7th, 9th, 6th, 10th, 4th, and 8th Circuits and bankruptcy court decisions applying said principles).

Here, the issue is whether Debtor may, under the totality of facts presented in this case, pursue relief under Chapter 13 and have this Court confirm a plan which would pay only a portion of Movant's claim over a three-year period and would then extinguish the remainder of his claim.

Debtor explains that she filed this case because she was unable to work because of illness, her house burned, and she moved into a rental apartment. She is now employed at minimum wage and contends that she is eligible for Chapter 13 protection. An

examination of the total circumstances, however, shows that Debtor's filing was not made in good faith.

In the first place, the nondischargeability of the same debt in her prior Chapter 7 case merits particular attention. In essence, because the claims added to Debtor's schedules represented the same debts underlying her judgment debt to Movant, the sole effect of confirming Debtor's Chapter 13 plan would be to award her a discharge of her obligation to Movant. *See id.* at 9-10 (stating that even "best effort" determination is not dispositive in discharging debt nondischargeable in Chapter 7 where "sole effect of confirming plan would be, in essence, to discharge single obligation").

In addition, Debtor has not evidenced an overall sincere effort to satisfy Movant's claim held non-dischargeable in Chapter 7. *See id.* at 7, 10-11 (finding lack of good faith where debtor filed Chapter 13 case as direct response to creditor's efforts to collect its judgment). Movant's claim, which is based on a judgment debt, now amounts to some \$29,000.00. Debtor seeks a minimal distribution to Movant, and her proposed plan, which extends over only three years, proposes to discharge the balance. At the same time, she would receive from Movant \$750.00 in ongoing monthly alimony under the South Carolina decree.

Furthermore, Debtor is attempting to manipulate the spirit and purposes

of bankruptcy. This is Debtor's third bankruptcy filing which attempts to dispose of the debt to Movant. She previously sought and obtained Chapter 7 relief and received an adverse determination of the dischargeability issue regarding her debt to Movant. She refiled Chapter 13 almost immediately thereafter. Only after Movant was granted relief from stay in order to pursue a state court action did Debtor voluntarily dismiss the second case.

Finally, and most important, it is readily apparent that the filing of the contempt action in South Carolina by Debtor's ex-husband was the catalyst prompting Debtor's current Chapter 13 case. Movant was, initially, the only creditor listed in this case, and the same debt that was at issue in the prior case is the debt sought to be discharged in this case. "Good faith is absent 'where all the facts lead inexorably to the conclusion that the petition has been filed to avoid, at minimal cost, a nondischargeable debt.' " Sellers, slip op. at 14 (quoting In re Meltzer, 11 B.R. 624, 627 (Bankr. E.D.N.Y. 1981), *quoted with approval in* Lawrence Tractor Co. v. Gregory (In re Gregory), 705 F.2d 1118, 1121 n.4 (9th Cir. 1983)).

I conclude, therefore, that Debtor's filing was not made in good faith.

ORDER

Pursuant to the foregoing, IT IS THE ORDER OF THIS COURT that
Debtor's case is dismissed.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 25th day of June, 2002